

CHAPTER 216

GOVERNMENT - LOCAL

HOUSE BILL 21-1168

BY REPRESENTATIVE(S) Bacon and Ricks, Amabile, Bernett, Bird, Exum, Froelich, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Lontine, McCluskie, McCormick, Snyder, Titone, Valdez D., Weissman, Garnett;
also SENATOR(S) Kolker, Gonzales, Hansen, Moreno, Pettersen, Winter, Garcia.

AN ACT

CONCERNING HISTORICALLY UNDERUTILIZED BUSINESSES IN LOCAL GOVERNMENT PROCUREMENT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 15 to article 1 of title 29 as follows:

PART 15
IDENTIFYING BARRIERS TO
HISTORICALLY UNDERUTILIZED BUSINESSES IN
LOCAL GOVERNMENT PROCUREMENT

29-1-1501. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) IT IS IMPERATIVE THAT THE LOCAL GOVERNMENT PROCUREMENT PROCESS BE FREE FROM BIAS SO THAT ALL QUALIFIED PERSONS AND ENTITIES MAY COMPETE FOR LOCAL GOVERNMENT BUSINESS;

(b) A FAIR PROCUREMENT PROCESS NOT ONLY ENSURES JUSTICE AND FAIRNESS IN LOCAL GOVERNMENT CONTRACTING BUT BROADENS THE PROCUREMENT CONTRACTOR POOL, WHICH RESULTS IN EFFICIENCIES AND, AS WARRANTED, PROMOTES THE GROWTH OF HISTORICALLY UNDERUTILIZED BUSINESSES, THEREBY CREATING JOBS AND STIMULATING THE LOCAL GOVERNMENT'S ECONOMY; AND

(c) ESTABLISHING A PILOT PROJECT TO IDENTIFY THE PERCEPTUAL AND SUBSTANTIAL BARRIERS TO ENTRY FOR HISTORICALLY UNDERUTILIZED BUSINESSES IN LOCAL GOVERNMENT PROCUREMENT IS THE APPROPRIATE WAY TO START THIS

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

CONVERSATION AT THE STATE GOVERNMENT LEVEL.

29-1-1502. Definitions. AS USED IN THIS PART 15, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS A BUSINESS THAT IS AT LEAST FIFTY-ONE PERCENT OWNED AND CONTROLLED, IN BOTH THE MANAGEMENT AND DAY-TO-DAY BUSINESS DECISIONS, BY ONE OR MORE INDIVIDUALS WHO ARE:

(a) UNITED STATES CITIZENS OR PERMANENT RESIDENTS; AND

(b) ONE OR MORE OF THE FOLLOWING:

(I) MEMBERS OF A RACIAL OR ETHNIC MINORITY GROUP;

(II) NON-HISPANIC CAUCASIAN WOMEN;

(III) PERSONS WITH PHYSICAL OR MENTAL DISABILITIES;

(IV) MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER COMMUNITY; OR

(V) VETERANS.

(2) "LOCAL GOVERNMENT" MEANS ANY COUNTY, CITY AND COUNTY, CITY, TOWN, OR SPECIAL DISTRICT, INCLUDING ANY COUNTY, CITY AND COUNTY, CITY, OR TOWN THAT HAS ADOPTED A HOME RULE CHARTER, AND ANY SCHOOL DISTRICT ORGANIZED AND EXISTING PURSUANT TO ARTICLE 20 OF TITLE 22, BUT NOT INCLUDING A LOCAL COLLEGE DISTRICT.

(3) "PERSONS WITH PHYSICAL OR MENTAL DISABILITIES" MEANS PERSONS WHO:

(a) HAVE IMPAIRMENTS THAT SUBSTANTIALLY LIMIT ONE OR MORE MAJOR LIFE ACTIVITIES;

(b) ARE REGARDED GENERALLY BY THE COMMUNITY AS HAVING A DISABILITY; AND

(c) WHOSE DISABILITIES SUBSTANTIALLY LIMIT THEIR ABILITY TO ENGAGE IN COMPETITIVE BUSINESS.

(4) "PROCUREMENT" MEANS ALL TYPES OF LOCAL GOVERNMENT PURCHASING BY CONTRACT FOR CONSTRUCTION, PROFESSIONAL SERVICES, GOODS, OR OTHER SERVICES.

(5) "PROGRAM" MEANS A HISTORICALLY UNDERUTILIZED BUSINESS PREFERENCE PROGRAM FOR LOCAL GOVERNMENT PROCUREMENT.

(6) "RACIAL OR ETHNIC MINORITY GROUP" MEANS:

(a) AFRICAN AMERICAN PERSONS, MEANING INDIVIDUALS HAVING ORIGINS IN ANY

OF THE BLACK RACIAL GROUPS;

(b) HISPANIC AMERICAN PERSONS, INCLUDING PERSONS OF MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR OTHER SPANISH OR PORTUGUESE CULTURE OR ORIGIN, REGARDLESS OF RACE;

(c) ASIAN AMERICAN PERSONS, INCLUDING PERSONS WHOSE ORIGINS ARE FROM JAPAN, CHINA, TAIWAN, KOREA, VIETNAM, LAOS, CAMBODIA, THE PHILIPPINES, SAMOA, THE UNITED STATES TERRITORIES OF THE PACIFIC, OR THE NORTHERN MARIANA ISLANDS; OR PERSONS WHOSE ORIGINS ARE FROM SUBCONTINENT ASIA, INCLUDING PERSONS WHOSE ORIGINS ARE FROM INDIA, PAKISTAN, BANGLADESH, SRI LANKA, BHUTAN, OR NEPAL; OR

(d) NATIVE AMERICAN PERSONS, INCLUDING PERSONS WHO ARE AMERICAN INDIANS, ESKIMOS, ALEUTS, OR HAWAIIANS OF POLYNESIAN DESCENT.

(7) "VETERANS" MEANS PERSONS WHO ACTIVELY SERVED IN THE UNITED STATES ARMED FORCES AND WHO WERE DISCHARGED OR RELEASED UNDER CONDITIONS OTHER THAN BAD CONDUCT OR DISHONORABLE, IN ACCORDANCE WITH U.S.C. TITLE 38, AS AMENDED. "VETERANS" INCLUDES PERSONS SERVING OR WHO SERVED IN THE NATIONAL GUARD OR AS RESERVISTS.

29-1-1503. Identifying barriers to entry for historically underutilized businesses in local government procurement - pilot program. (1) NO LATER THAN AUGUST 13, 2021, THE DEPARTMENT OF LOCAL AFFAIRS SHALL ESTABLISH A PILOT PROGRAM TO HELP LOCAL GOVERNMENTS IDENTIFY PERCEPTUAL AND SUBSTANTIAL BARRIERS TO ENTRY FOR HISTORICALLY UNDERUTILIZED BUSINESSES IN LOCAL GOVERNMENT PROCUREMENT. THE DEPARTMENT OF LOCAL AFFAIRS SHALL ENSURE THAT THE LOCAL GOVERNMENTS THAT OPT IN TO THE PILOT PROGRAM ARE REPRESENTATIVE OF THE LOCAL GOVERNMENTS THAT INTERSECT THE RURAL, URBAN, AND SUBURBAN GEOGRAPHIES OF THE STATE AND ARE REPRESENTATIVE OF THE VARYING TYPES OF LOCAL GOVERNMENTS. THE PILOT PROGRAM MUST INCLUDE AT LEAST FIVE DIVERSE LOCAL GOVERNMENTS.

(2) THE LOCAL GOVERNMENTS PARTICIPATING IN THE PILOT PROGRAM SHALL:

(a) IDENTIFY PROGRAM IMPLEMENTATION NEEDS, SUCH AS LABOR AND TECHNOLOGY;

(b) DETERMINE THE APPROPRIATE SIZE CONTRACTS THAT WOULD BENEFIT FROM A PROGRAM;

(c) DETERMINE THE APPROPRIATE TYPE OF CONTRACTS THAT WOULD BENEFIT FROM A PROGRAM, SUCH AS, CONSTRUCTION OR SERVICE CONTRACTS, OR SHORT-TERM OR LONG-TERM CONTRACTS;

(d) ESTABLISH A REASONABLE THRESHOLD FOR THE AMOUNT OF A LOCAL GOVERNMENT'S OPERATING BUDGET THAT SHOULD BE ALLOCATED TO THE ESTABLISHMENT AND MAINTENANCE OF A PROGRAM;

(e) UNDERSTAND THE AVAILABLE PROGRAM SOFTWARE AND COSTS;

(f) DETERMINE HOW WE CAN STANDARDIZE THE DATA ACROSS LOCAL GOVERNMENTS TO BEING SUBMITTED TO THE STATE;

(g) DETERMINE THE REQUIRED MINIMUM PARTICIPATION GOALS OR PARTICIPATION BENCHMARKS OF HISTORICALLY UNDERUTILIZED BUSINESSES TO DETERMINE IF THE LOCAL GOVERNMENT'S PROGRAM IS FAIR;

(h) DETERMINE WHICH TYPES OF HISTORICALLY UNDERUTILIZED BUSINESSES, AS SPECIFIED IN SECTION 29-1-1502 (1)(b), APPEAR TO BE MORE OR LESS IMPACTED;

(i) CREATE A SAMPLE PROGRAM THAT ALL LOCAL GOVERNMENTS MAY USE AND ARTICULATE THE NECESSARY STEPS TO BUILD A PROGRAM; AND

(j) HELP ARTICULATE PROGRAM GOALS AND TARGETS, SUCH AS DETERMINING WHY A PROGRAM IS IMPORTANT FOR THE LOCAL GOVERNMENT AND WHAT OUTCOMES THE LOCAL GOVERNMENTS WISH TO SEE FROM PROGRAM IMPLEMENTATION.

(2) A PILOT PROGRAM PARTICIPANT MAY COLLABORATE WITH THE DEPARTMENT OF LOCAL AFFAIRS AND THE GENERAL ASSEMBLY ON FUTURE LEGISLATION REQUIRING LOCAL GOVERNMENTS TO ESTABLISH PROGRAMS.

(3)(a) IN JANUARY 2022, THE DEPARTMENT OF LOCAL AFFAIRS SHALL REPORT ON THE PROGRESS OF THE PILOT PROJECT AS PART OF THE DEPARTMENT'S PRESENTATION TO ITS COMMITTEE OF REFERENCE AT A HEARING HELD PURSUANT TO SECTION 2-7-203 (2)(a) OF THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT".

(b) IN JANUARY 2023, THE DEPARTMENT OF LOCAL AFFAIRS SHALL INCLUDE THE FINDINGS OF THE PILOT PROJECT AS PART OF THE DEPARTMENT'S PRESENTATION TO ITS COMMITTEE OF REFERENCE AT A HEARING HELD PURSUANT TO SECTION 2-7-203 (2)(a) OF THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT".

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 7, 2021